



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-227 Subscriber Television Services**

Date last adopted: **February 13, 1991**

Reviewer: **Greg Potegal**

Date review completed: **March 29, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document: The purpose of this rule is to describe the taxability of persons providing television programming to consumers for a fee.

2. Need:

YES	NO	
x		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	x	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	x	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
x		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.



3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	x	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
x		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
x		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
x		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Audit Directive 8227.1 (Advertising income—Cable television producers) explains that advertising income of cable television producers is subject to the radio and television broadcasting B&O tax classification. This document can simply be repealed because this information is provided in the rule.

Rule 227 should be revised to address the taxability of the provision of equipment along with television programming.

- **15 WTD 152 (1996) explains that while a cable television company's rental of remote control units and standard converters is a retail sale, charges for addressable converters which descramble the company's signal are subject to service and other activities B&O tax as a part of the service provided.**
- **Tele-Vue Systems, Inc. vs. Dept of Revenue, BTA Docket # 96-11 provides that charges for addressable converters are retail sales as rentals of tangible personal property.**

**4. Clarity and Effectiveness:**

YES	NO	
x		Is the document written and organized in a clear and concise manner?
x		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
	x	Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
x		Do changes in industry practices warrant repealing or revising this document?
	x	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The document is not providing all of the results that were intended because it does not discuss the taxability of providing and separately charging for equipment along with television programming.**

5. Intent and Statutory Authority:

YES	NO	
x		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
x		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	x	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **The authority to adopt this rule is RCW 82.32.300. That statute authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	x	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has sole authority to administer excise taxes in this area.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	x	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)



Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
x		Does the document result in equitable treatment of those required to comply with it?
	x	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	x	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **The rule affects all similarly situated taxpayers in the same fashion.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to subscriber television services:**

- **RCW 82.04.050 “Sale at retail” “retail sale”**
- **RCW 82.04.080 “Gross income of the business”**
- **RCW 82.04.220 Business and occupation tax imposed**
- **RCW 82.04.280 Tax on . . . radio and television broadcasting . . .**
- **RCW 82.04.290 Tax on . . . other business or service activities**
- **RCW 82.08.020 Tax imposed—Retail sales . . .**
- **RCW 82.12.020 Use tax imposed**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

Audit Directive 8227.1 Advertising income—Cable television producers

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Tele-Vue Systems, Inc. vs. Dept of Revenue, BTA Docket # 96-11, Discussion of the taxability of the provision of equipment along with television programming.

Administrative Decisions (e.g., WTDs):

15 WTD 152 (1996) Discussion of the taxability of the provision of equipment along with television programming

Attorney General’s Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

- ☒ Amend
- ☐ Repeal
- ☐ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

The rule should be amended to incorporate instructions on the taxability of the provision of equipment.

11. Manager action: Date: _____

- ☐ Reviewed recommendation ☐ Accepted recommendation
- ☐ Returned for further action

Comments: